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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,644	12/29/2003	Michael Scott Brunner	17,777	6906
23556 7590 09/04/2008 KIMBERLY-CLARK WORLDWIDE, INC. Catherine E. Wolf 401 NORTH LAKE STREET NEENAH, WI 54956				
EXAMINER				
NGUYEN, THUY-VI THI				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/748,644

Applicant(s)

BRUNNER ET AL.

Examiner

THUY VI NGUYEN

Art Unit

3689

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-15, 17, 18 and 20-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-15, 17, 18 and 20-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Examiner's Comments

1. This action is in response to applicant's amendment received on May, 21, 2008 wherein:

Claims 1 and 21 have been amended;

Claims 3, 16, 19, and 23 have been cancelled;

Claims 1, 2, 4-11, 12-15, 17, 18, 20, 21-22 are currently pending.

Claims 1 and 21 are amended as follow:

1. (currently amended) A method for selling a perishable-receiving premium container, the method comprising:

providing the premium container adjacent to a display of a perishable, wherein the premium container is adapted to be used by a consumer to place the perishable into the premium container;

charging the consumer for the perishable;

charging the consumer for the premium container based on indicia on the premium container; and

controlling an element with the premium container, wherein the element is selected from the group consisting of humidity, temperature, physical impact, odor, microbes, liquid leakage, liquid, gas mix, excess oil, and light.

21. (currently amended) A method for producing a perishable-receiving :premium container, the method comprising:

manufacturing a plurality of premium containers, wherein each premium container includes an element-control feature selected from the group consisting of humidity, temperature, physical impact' odor, microbes, liquid leakage liquid, gas mix, excess oil, and light and an indicia of the price of the premium container; and

assembling the plurality of premium containers to facilitate dispensing to a consumer and/or a retail worker.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It is unclear to the examiner about the term "premium container". Therefore, it is interpreted as "a container".

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 2, 4-11, 12-15, 17, 18, 20, 21-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Poirier (US 2003/0057026 A1) in view of Cappel (US 7,008,106 B2).

As for claim 1, Poirier a method for selling a perishable-receiving premium container, the method comprising:

providing the premium container adjacent to a display of a perishable, wherein the premium container is adapted to be used by a consumer to place the perishable into the premium container [...providing the container (bag) at the grocery store; abstract; par. 0004; 0014; figures 1-2];

charging the consumer for the perishable [...customer purchase of selected merchandise (food) which imply the merchandise has to be charged; see par. 0014];

charging the consumer for the premium container based on indicia on the premium container [...the bags/container may be sold to customer at retail grocery store; see figure par. 0009; par. 0014 and figures 2-3]; and

However, Poirier does not mention the indicia on the container; controlling an element with the premium container, wherein the element is selected from the group consisting of humidity, temperature, physical impact, odor, microbes, liquid leakage, liquid, gas mix, excess oil, and light.

Cappel discloses the container with a price tag/indicia [...col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix , humidity as showed at least in figures 5a-b, 6a-b, 8a-b]. It is interpreted these figures meet the claimed limitation.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having slider bag/container as taught by Cappel in order to make it convenience for the consumer to use and also to protect the food from decay.

As for claim 2, Poirier discloses further comprising providing a perishable, wherein the perishable is of a type selected from the group consisting of produce, deli, fast food, quick-serve food, frozen food, baked goods, meat, fish, and floral [...merchandise (food) at grocery store; par. 0014 and figure 1]..

As for claim 4, Cappel discloses providing indicia related to the container indicative of a price of the container, wherein the indicia is selected a price tag [Fig.5a and 5b].

As for claim 5, Cappel discloses the container being resealable [col.1, lines 15-17. figures 1-2].

As for claim 6, Poirier discloses a plurality of the containers [...providing bags; figures 2-3].

As for claim 7, Cappel disclose wherein the providing step includes providing the container on a wicket [...see figure 1-2].

As for claim 8, Cappel discloses the container on a roll [...purchase package of slider bags/container; see col. 1, lines 37-40].

As for claim 9, Cappel container in a box [...purchase package of slider bags/container; see col. 1, lines 37-40].

As for claim 10, Cappel discloses the container is disposable [...plastic slider bags; col. 1, lines 59-60].

As for claim 11, Cappel discloses allowing a consumer to place the perishable into the container and to seal the container [...open the slider bag; use a portion of the product and reclose the bag; see col. 1, lines 48-50].

As for claim 12, Poirier discloses a method for offering a consumer a choice between disposable perishable- receiving containers, the method comprising:

providing a premium container adjacent to a perishable [...providing container (selling bags that can be re-usable) at grocery store; par. 0004; par. 0014]

providing a standard container adjacent to the perishable [...providing container (bags which is previous used) at grocery store; par. 0005; par. 0014];

allowing the consumer to choose between the standard and premium containers [...allowing the consumer the choice of either using a previously used bag or using a bag from the store; see figure 2]; and

charging the consumer for the container chosen based on indicia on the container, wherein the charge for the premium container is greater than the charge for the standard container [...*there may be a charge for using the bags that are from store; and there's no charge for the bag that consumer has from previous purchase*; par. 0009; par. 0014].

However, Poirier does not teach while Cappel discloses the indicia on the container [...price tag on the bag; col. 8, lines 1-5 and figures 5a-b].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having a price tag on the container as taught by Cappel in order to make it easy for the consumer as well as the store personnel.

As for claim 13, Cappel discloses the indicia is selected from the group consisting of a bar code, a chip, a smart tag, an electronically-based indicator, a magnetically-based indicator, a price tag, a produce-type number, a model number, a color, a container shape, and a SKU [...a price tag; col. 8, lines 1-5 and figures 5a-b].

As for claim 14, Poirier disclose wherein the charge for the standard container is zero [...there's no charge for the bag that consumer has from previous purchase; par. 0009; par. 0014]. Further more, it's obvious that the plastic produce bags are usually provided (without charge) to hold the selected fruits and vegetables at the supermarkets or grocery store.

As for claim 15, Cappel discloses wherein the premium container has an element- control feature [...slider bag with zipper (22) to thermally fused; col. 6, lines 44-42 and figures 1-2].

As for claim 17, Cappel disclose the premium container has a plurality of element-control features [...a plastic bag with re-closable zipper and the slider; abstract].

As for claim 18, Poirier disclose a method for selling disposable perishable-receiving premium containers, the method comprising:

providing a first container adjacent to a first perishable, wherein the first container is adapted to be used by a consumer to place the first perishable into the first container, and wherein the first container has a first element-control feature [...*providing container (selling bags that can be re-usable) at grocery store*; par. 0004; par. 0014; figures 1-3]

providing a second container adjacent to a second perishable, wherein the second container is adapted to be used by the consumer to place the second perishable into the second container, and wherein the second container has a second element-control feature [...*providing container (bags which is previous used) at grocery store*; par. 0005; par. 0014];

allowing the consumer to choose between the first and second containers [...*allowing the consumer the choice of either using a previously used bag or using a bag from the store*; see figure 2];

and charging the consumer for the container chosen based on the indicia on the container chosen [...*the bags/container may be sold to customer at retail grocery store*; see figure par. 0009; par. 0014 and figures2- 3].

However, Poirier does not teach while Cappel discloses the indicia on the container and the control element feature [...*plastic bag with slider and re-closable zipper features; price tag on the bag*; abstract; col. 8, lines 1-5 and figures 1, 2, 5a-b].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having a price tag and the control

element features on the container as taught by Cappel in order to make it easy for the consumer to use and also to protect the food from decay.

As for claim 20, Cappel discloses wherein the first container has a plurality of element- control features [...a plastic bag with re-closable zipper and the slider; abstract].

As for claim 21, Poirier discloses a method for producing a perishable-receiving premium container, the method comprising:

assembling the plurality of premium containers to facilitate dispensing to a consumer and/or a retail worker [...*merchant provides customers with re-usable bags for transporting their purchase*; abstract].

However, Poirier does not teach manufacturing a plurality of premium containers, wherein each premium container includes an element-control feature selected from the group consisting of humidity, temperature, physical impact' odor, microbes, liquid leakage' liquid, gas mix, excess oil, and light and an indicia of the price of the premium container and an indicia of the price of the container

Cappel discloses the container with a price tag/indicia [...col. 8, lines 1-5 and figures 5a-b; 6a-b shows price tag (56) on the bag]; wherein the container/zip lock bag has a slider (32) to seal the bag for controlling the microbes, temperature, gas mix , humidity as showed at least in figures 5a-b, 6a-b, 8a-b].

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include the method of selling the container and charging for the perishable as taught by Poirier with the method of having slider bag/container as taught

by Cappel in order to make it convenience for the consumer to use and also to protect the food from decay.

As for claim 22, Cappel discloses the plurality of premium containers are disposable [...plastic slider bags; col. 1, lines 59-60].

Response to Arguments

6. Applicant's arguments filed 05/21/08 have been fully considered but they are not persuasive.

On pages 7-8 of the remark, Applicant stated that Poirier does not teach "allowing the consumer with a choice between standard and premium container" (claims 12 and 18). The Examiner respectfully disagrees. Poirier discloses allowing the customer with a choice to bring the re-usage bag/container back to the store for transporting the purchases; if the customer doesn't have a re-usable bag, the store can provide or sell the bag/container to the customer (see abstract and figure 2). This is interpreted as allowing the customers with a choice either using their own re-usable bag/standard container or using the bags/premium container from the store. Therefore, Poirier teaches allowing the consumer with a choice between standard and premium container.

On page 7 of the remark, Applicant stated neither Poirier or Cappel teach the amended claims " 1 and 21" a method of controlling an element with the container wherein the element is selected from the group humidity, temperature, physical impact, odor, microbes, liquid, gas mix, excess oil, and light. Applicant is respectfully disagrees.

Cappel discloses the container/zip lock bag has a slider (32) to seal the bag. This is interpreted that the slider bag is for controlling the microbes, temperature, gas mix, humidity as showed at least in figures 5a-b, 6a-b, 8a-b].

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thuy-Vi Nguyen whose telephone number is 571-270-1614. The examiner can normally be reached on Monday through Thursday from 8:30 A.M to 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janice Mooneyham can be reached on 571-272-6805. The fax phone

number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. N./

Examiner, Art Unit 3689

/Janice A. Mooneyham/

Supervisory Patent Examiner, Art Unit 3689